

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
ORA'S MOTION TO ESTABLISH A MEMORANDUM ACCOUNT**

This ruling denies the Office of Ratepayer Advocates' (ORA's) motion to (1) establish a memorandum account to track the earnings of Verizon California Incorporated (Verizon), and (2) make Verizon's earnings subject to refund until the Commission determines just and reasonable rates for Verizon.

Background

On January 22, 2002, ORA filed a motion to (1) establish a memorandum account to track Verizon's earnings, and (2) make Verizon's earnings tracked by the account subject to refund pending the Commission's determination of just and reasonable rates for Verizon. ORA asserts that Verizon's earnings "have

increased to astounding levels" contrary to the intent of Pub. Util. Code § 451.¹ ORA further asserts that it is necessary for the Commission to grant ORA's motion promptly "in order to preserve the Commission's full range of options to reduce Verizon's rates and ensure that any excesses are refunded to ratepayers." Verizon strongly opposes ORA's motion, while The Utility Reform Network supports the motion.

Discussion

ORA's motion hinges on the assertion that Verizon's earnings "have increased to astounding levels." This is a factual issue that should be resolved after the parties have had an opportunity to develop the record through evidentiary hearings and to present arguments in their post-hearing briefs that reflect the evidentiary record.² Parties will have an opportunity to do so in Phase 1 of this proceeding where ORA has recommended (1) the establishment of a memorandum account to track Verizon's sharable earnings, and (2) make Verizon's rates subject to refund pending the conclusion of Phase 3 of this proceeding.³ Therefore, for the foregoing reasons, ORA's motion to immediately establish a memorandum account is denied.

¹ Section 451 states, in relevant part, as follows: "All charges demanded or received by any public utility...for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable."

² Verizon has submitted testimony in Phase 1 of this proceeding that purports to show that ORA has overstated Verizon's earnings. (See the Reply Testimony of Nancy Heuring on Behalf of Verizon California Inc.)

³ See the Opening Testimony of Danilo E. Sanchez on Behalf of the Office of Ratepayer Advocates, page 22. Verizon's motion to strike ORA's Phase 1 testimony pertaining to the establishment of a memorandum account and making Verizon's rates subject to refund was denied by the assigned Administrative Law Judge in another ruling.

Therefore, **IT IS RULED** that:

1. The Office of Ratepayer Advocates' motion is denied.
2. The issues of whether (i) Verizon California Incorporated (Verizon) should be required to establish a memorandum account to track its earnings and (ii) Verizon's rates should be subject to refund will be revisited after the parties have had an opportunity in Phase 1 of this proceeding to develop the record regarding these issues through evidentiary hearings and to present arguments in their post-hearing briefs that reflect the evidentiary record.

Dated March 13, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying ORA's Motion to Establish a Memorandum Account on all parties of record in this proceeding or their attorneys of record.

Dated March 13, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

N O T I C E

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